

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

ARAK L. McCOY,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

DOCKET NUMBER WD76625

Date: March 17, 2015

Appeal from:
Jackson County Circuit Court
The Honorable Michael W. Manners, Judge

Appellate Judges:
Division Four: Alok Ahuja, C.J., Presiding, Cynthia L. Martin, J. and David H. Miller, Sp. J.

Attorneys:
Jonathan Laurans, Kansas City, MO, for appellant.
Evan J. Buchheim, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

ARAK L. McCOY

Appellant,

v.

STATE OF MISSOURI,

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WD76625

Jackson County

Arak McCoy pleaded guilty in the Circuit Court of Jackson County to one count of statutory sodomy involving a victim less than 14 years old, for which he was sentenced to ten years' imprisonment. Execution of the sentence was suspended, and McCoy was placed on probation for five years. Following his guilty plea, McCoy filed a motion under Supreme Court Rule 29.07(d), seeking to withdraw his plea. McCoy argued that his guilty plea was not knowing and voluntary because his plea counsel had failed to advise him that, as a result of his guilty plea, he would be subject to lifetime electronic monitoring using the global positioning system ("GPS"). McCoy also alleged that counsel had misadvised him that he could petition the court to be released from supervision and registration requirements after two years.

The circuit court conducted an evidentiary hearing, and later denied McCoy's motion. The circuit court concluded that the lifetime GPS monitoring requirement was a "collateral consequence" of McCoy's guilty plea, and that counsel therefore had no constitutional obligation to inform him of the monitoring requirement. The court also found that, even if counsel had violated a constitutional duty to advise McCoy of the GPS monitoring requirement, McCoy was not prejudiced, because there was no reasonable probability that he would have insisted on going to trial if he had been more fully advised.

McCoy appeals.

AFFIRMED.

Division Four holds:

The State argues that we lack appellate jurisdiction over the circuit court's denial of McCoy's Rule 29.07(d) motion to withdraw his guilty plea. While the Missouri Supreme Court has held that no appeal may be taken from the denial of a Rule 29.07(d) motion where the motion is denied prior to the imposition of sentence, numerous Missouri cases hold that appellate jurisdiction exists to review the denial of a Rule 29.07(d) motion, where the motion is filed after

sentence has been imposed, and a final judgment of conviction has been entered. This is such a case, and we accordingly have jurisdiction over McCoy's appeal.

We need not decide whether counsel was constitutionally required to advise McCoy of the lifetime supervision and monitoring consequences which flowed from his guilty plea. Even if counsel was under such an obligation, the circuit court's decision is subject to affirmance for a separate reason: the circuit court found that further advice would not have altered McCoy's decision to plead guilty. This finding is not clearly erroneous. McCoy faced a charge – statutory sodomy involving a victim who was less than twelve years old – which carried a mandatory minimum sentence of ten years; moreover, because the offense was designated as a “dangerous felony,” McCoy would have been required to serve 85% of any sentence imposed. McCoy avoided this mandatory minimum sentence, and the 85% service requirement, when the State amended the charge to allege a victim under 14 years of age. As counsel testified, there was overwhelming evidence (including medical evidence) supporting McCoy's guilt, and there was a high likelihood he would have been convicted at trial. If he had gone to trial and been convicted, McCoy would have been subject to the same GPS monitoring requirements. In addition, counsel testified that McCoy had acknowledged having sex with another minor victim outside Missouri. Counsel testified that he discussed with McCoy that this other victim could be considered as an aggravating sentencing factor.

In addition, the circuit court did not clearly err in rejecting McCoy's separate claim that counsel misrepresented to him that he would be eligible to petition for release from supervision two years after his conviction. Although counsel acknowledged that he had mentioned petitioning for early release as “a possibility,” he clarified that this “was just kind of a generalized thought that, you know something to look into maybe later.”

Before: Division Four: Alok Ahuja, C.J., Presiding, Cynthia L. Martin, J. and David H. Miller, Sp. J.

Opinion by: Alok Ahuja, Chief Judge

March 17, 2015

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